

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 609 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

LAKHA THAVRA TARAL

Appearance:

MR. K.C. SHAH, LD. PUBLIC PROSECUTOR for Petitioner
MR JV DESAI for Respondent No. 1 (Appointed)
DELETED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE Y.B.BHATT
Date of decision: 03/09/97

ORAL JUDGEMENT

Three accused persons came to be acquitted by the
Ld. Sessions Judge, Sabarkantha at Himatnagar of the
offence punishable under section 302 read with section 34
I.P.C. in Sessions Case No. 55 of 1984, under the orders

dated March 11, 1985. The above said orders came to be challenged by filing the present Appeal by the Appellant State. At the admission stage the Appeal against Respondents no.2 & 3 came to be dismissed, but came to be admitted qua the Respondent no.1 after the grant of the leave. Therefore in the present Acquittal Appeal, we are concerned with the Respondent no.1.

The case of the prosecution was that, prosecution witness no.1 Suresh, exhibit-13, a boy aged about 18 years being a student, was returning to his home town. While he was so returning, he had seen the three persons who were assaulting upon the deceased Asa Virma and later on he had identified the deceased Asa Virma, who was lying dead in the field. According to the case of the prosecution, Suresh had furnished this information to other witnesses and later on after the customary meeting of the village people in which it was decided to file the FIR before the police, the complaint came to be lodged. The charge at exhibit- 3 came to be denied by the accused persons. Upon the appreciation of the evidence on record, the Court below has come to the conclusion that the prosecution was not able to establish the charges levelled against the accused.

Upon appreciation of the evidence on record, it appears that the Court below was perfectly justified in recording the orders of acquittal against the Respondent accused, with whom we are concerned in the present Appeal also. Sureshbhai, PW-1, exhibit-13, on whose evidence the entire case of the prosecution is based does not appear to be a reliable witness, upon whose say the orders of acquittal can be reversed by us. Sureshbhai has said that, three persons were assaulting upon one another person and that, instantaneously he was not able to identify the victim, but later on, when he had reverted to the scene of occurrence once again, he and other witnesses were able to identify the deceased in the dim light of a match stick. If Sureshbhai was not able to identify the victim from a distance of about 30 ft., it is difficult to appreciate as to how he would be able to identify the assailants. More over, according to the say of Sureshbhai, two of the three accused persons had given two stick blows on the person of the deceased. According to him, even after the deceased had fallen down, stick blows were tendered on his person. Looking to this say of Sureshbhai, one would expect multiple injuries which could have been caused by the stick blows on the person of the deceased. Any how, the medical evidence on record goes to show only 3 C.L.Ws and two abrasions on the person of the deceased. This medical

evidence therefore which runs counter to the ocular version, falsifies the say of the Sureshbhai. There is one more important aspect which would also go to falsify the say of Sureshbhai. This appears to be clear when the reference is made to the evidence of one Paktha, PW-3, exhibit-20, who has testified that he had heard the hue & cry and Sureshbhai had informed him and other witnesses "that somebody after assaulting somebody is running away". Therefore the evidence of Paktha, PW-3, exhibit-20 would go to show that, Sureshbhai the only alleged eye witness was not in a position to identify any of the accused persons, including the Respondent accused with whom we are concerned in the present Appeal.

Therefore, it is apparently clear that the learned Sessions Judge was perfectly justified in ordering acquittal of the Respondent, with whom the present Appeal is concerned. In our opinion, therefore, the present Appeal requires to be dismissed. We order accordingly. In the result, therefore, the order of acquittal under challenge stands confirmed and upheld. The bail bond taken in pursuance of theailable warrant issued by this Court against the Respondent no.1 shall stand cancelled.

/vgn.